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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,707	07/10/2003	Refaat S. Fanous	2682/102	1553
2101	7590	01/24/2006	EXAMINER	
BROMBERG & SUNSTEIN LLP 125 SUMMER STREET BOSTON, MA 02110-1618			ARAJ, MICHAEL J	
			ART UNIT	PAPER NUMBER
			3733	
DATE MAILED: 01/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/616,707	FANOUS, REFAAT S.	
	Examiner	Art Unit	
	Michael J. Araj	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,9,11-14,16,18,20,23,24,27,31-34,36,37 and 40-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3,9,11-14 and 48 is/are allowed.
- 6) ☒ Claim(s) 16,18,20,23,24,27,31-34,36,37 and 40-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

Claims 44-48 have been newly added. Claims 1-3, 9, 11, 12-14, 16, 18, 20, 23, 24, 27, 31-34, 36, 37 and 40-48 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 44 recites the limitation "one groove" in line 4. This claim lacks a sufficient antecedent basis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 41-43 are rejected, as understood, under 35 U.S.C. 102(b) as being anticipated by Liu et al. (U.S. Patent No. 6,083,154)

Van Meter discloses a method of retracting vaginal walls of a patient with retractors (E) mounted on a frame (B) where the frame maintains a separation of the retractors and the vaginal walls, where the retraction device is further provided with a handle (b) for mounting the frame in a desired position, and where the retraction device

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further provides a means (D') to mount the retractors on the frame (see lines 67-86).

Van Meter also discloses a lengthwise track (14)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Bates et al. discloses a one-piece frame hinged on a handle and slidably attached to a support element

Claims 14, 16, 18, 23, 31, 33 and 37 are rejected, as understood, under 35 U.S.C. 103(a) as being unpatentable over Santilli et al. (U.S. Patent No. 6,099,468).

Santilli et al. discloses a retraction device (10) comprising a frame (see Figure 1 below) hinged (28) on a handle (30), where the frame includes a track (50) and at least one or more anterior retractors with a curved blade (78, 80, 82), attached to the retractor-handle (84) that is attached to the frame with a jig (54), where the retractor (10) is slidably mounted on the track (50) by a jig that does not contact the patient; a ratchet mechanism (26); and a support element (90) attached to the handle for retaining the device in a position. Santilli et al. discloses the claimed invention except for the frame being one-piece. Santilli et al. discloses the claimed invention except for the frame being one-piece. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the frame of this invention one-

piece, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. Howard v. Detroit Stove Works, 150 U.S. 164 (1893).

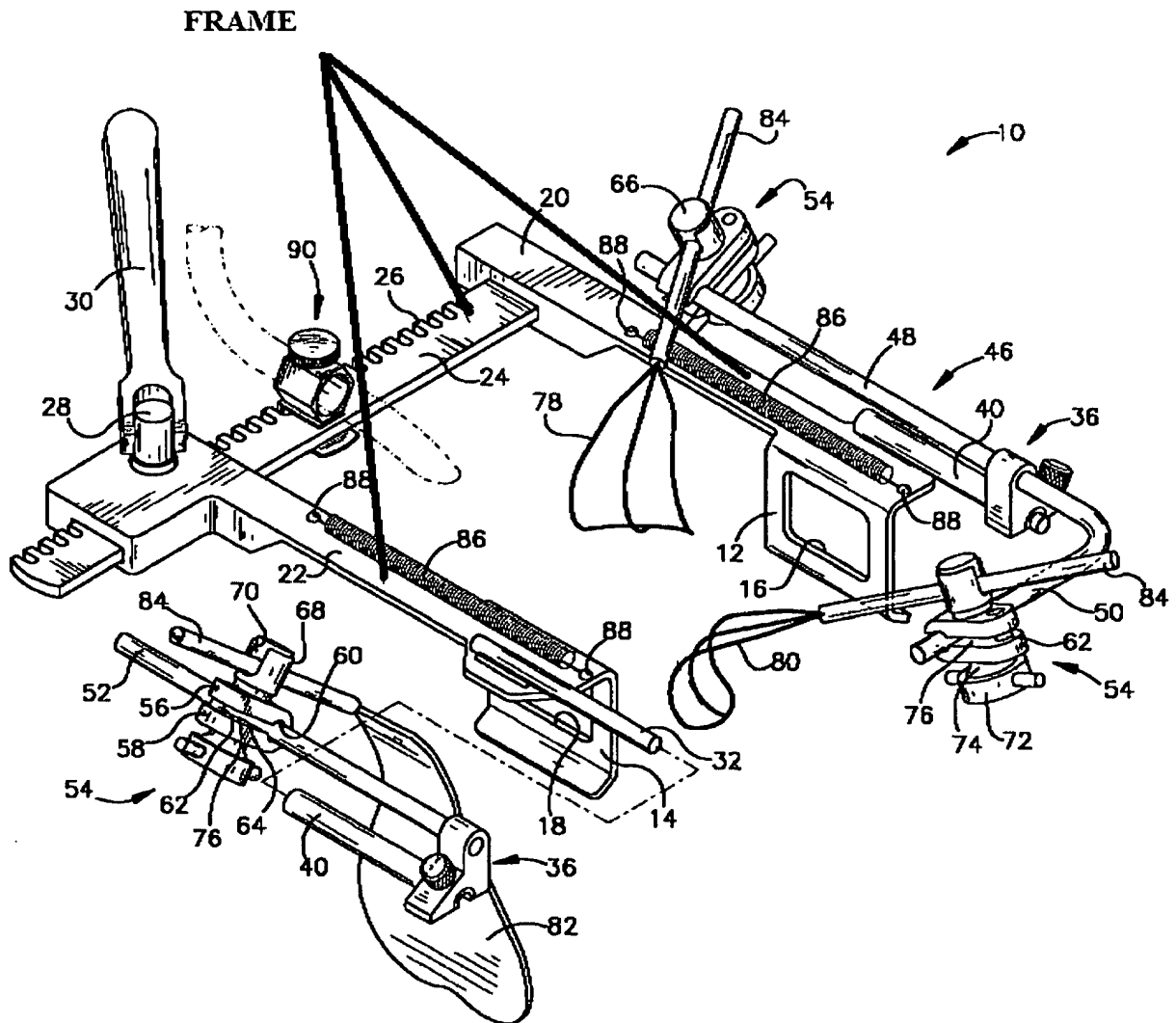


Figure 1

Claims 14, 16, 18, 20, 23, 31-34 and 40 are rejected, as understood, under 35 U.S.C. 103(a) as being unpatentable over Karlin et al. (U.S. Patent No. 3,509,873).

Karlin et al. discloses a retraction device (1) comprising a frame (see Figure 2 below) hinged (18) on a handle (25), where the frame includes a track (see Figure 2) and a least one or more anterior retractors with a curved blade (see Figure 2), attached to the retractor-handle (see Figure 2) that is attached to the frame with a jig (12), where the retractor is slidably mounted on the track by a jig that does not contact the patient; the track includes a groove/slot (14) for slidably mounting the jig (12) to the track; a support element (9) attached to the handle (25); a retractor-handle that has a groove along a portion of a length of it, where the groove (14) has a differential width (30); and the retractor is configured with a curved blade forming a groove capable of supporting another blade. Karlin et al. discloses the claimed invention except for the frame being one-piece. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the frame of this invention one-piece, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

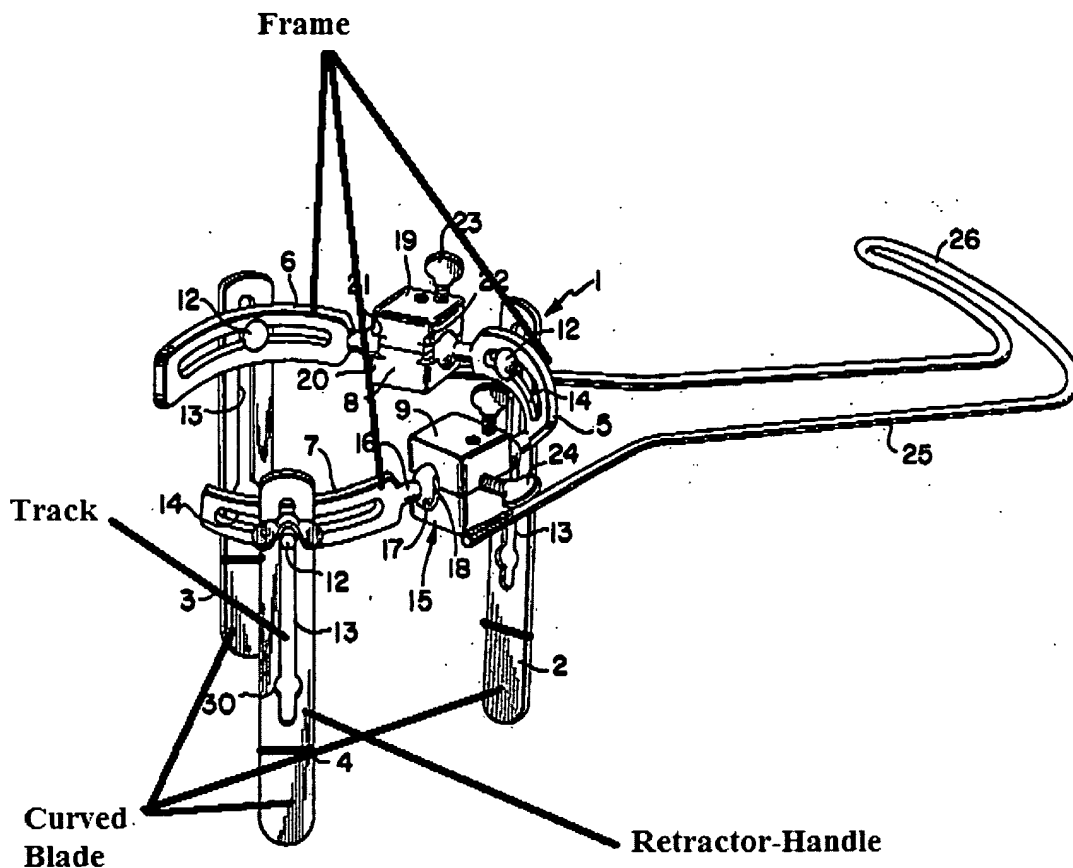


Figure 2

Claims 14, 16, 18, 31, 33, 34, 36 and 37 are rejected, as understood, under 35 U.S.C. 103(a) as being unpatentable over Van Meter (U.S. Patent No. 497,064).

Van Meter discloses a retraction device (Figure 1) comprising a frame (B) hinged on a handle (b), where the frame includes a track and a least one or more anterior retractors with a curved blade (E), attached to the retractor-handle (D) that is attached to the frame with a jig (g), where the retractor (E) is slidably mounted on the track (B) by

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a jig that does not contact the patient; a ratchet mechanism (d); and a retractor-handle (D) that is attached to a curved blade (E) with a hinge, since F and D can be hingedly rotated because of how they are connected. Van Meter discloses the claimed invention except for the frame being one-piece. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the frame of this invention one-piece, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

With regards to claim 36, Van Meter discloses the invention claimed except for a ball-type hinge joint. It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Van Meter with the hinge joint being a ball-type hinge instead of any other type hinge joint as such would merely constitute substitution of functionally equivalent hinge structures.

Claims 14, 16, 18, 23, 24, 27, 31 and 33 are rejected, as understood, under 35 U.S.C. 103(a) as being unpatentable over McCready et al. (U.S. Patent No. 4,254,763) in view of Bates et al. (U.S. Patent No. 1,157,202).

McCready et al. discloses a retraction device comprising a frame (18) hinged (41) on a handle (48), where the frame includes a track (50) and a least one or more anterior retractors with a curved blade (74), attached to the retractor-handle (75) that is attached to the frame with a jig (79), where the retractor is slidably mounted on the track by a jig that does not contact the patient; a ratchet mechanism (76); and a support element (28) that is a flat sheet attached to the handle with a bracket for retaining the

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device in a position. It is understood that the frame also serves as the track for the retractors to slide along. McCready et al. disclose the claimed invention except for the frame being one-piece. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the frame of this invention one-piece, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. Howard v. Detroit Stove Works, 150 U.S. 164 (1893).

With respect to claims 44-47, McCready et al. disclose the claimed invention except for a groove formed along two lengthwise edges of the retractor blade. Bates et al. disclose two lengthwise grooves (12) to insert a blade to extend the distance of the retractor. It would have been obvious to one skilled in the art at the time the invention was made to construct the invention of McCready et al., with blades having lengthwise grooves in view of Bates et al., in order to enable a deeper working space.

Response to Arguments

In response to Applicant's argument that certain devices are used for abdominal surgery, the fact that Applicant uses in the invention for a different purpose does not alter the conclusion that its use in a prior art device would be prima facie obvious from the purpose disclosed in the reference.

With respect to claim 36 the rejection holds. "b" is still considered the handle attached to the frame.

Allowable Subject Matter

Claims 1-3,9, 12, 13 and 48 are allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Araj whose telephone number is 571-272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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SUPERVISORY PATENT EXAMINER